

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14796 of 2005

For Approval and Signature:

**HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA
HONOURABLE MR.JUSTICE D.A.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GHANSHYAM SAVAJIBHAI & 6 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR PRADEEP PATEL for Petitioner(s) : 1 - 7.

MR SP HASURKAR ASST GOV PLEADER for Respondent(s) : 1,

RULE SERVED BY DS for Respondent(s) : 2 - 5.

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**CORAM : HONOURABLE THE ACTING CHIEF JUSTICE
Y.R.MEENA**

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/08/2006

ORAL JUDGMENT

This petition is in the nature of public interest litigation.

The following prayers have been made in this writ petition.

“[b] Be pleased to issue appropriate writ, order or direction in the nature of mandamus directing the State Government and other respondents to constitute an expert committee under the supervision of this Hon'ble Court to investigate into the illegal and unauthorized use of water from Brahmani Dam and right hand side canal by various illegal means and to stop same forthwith and to take steps to punish who are guilty in commission of action and omissions and further be pleased to pass appropriate orders directing the respondents to ensure that adequate water supply for the purpose of irrigation from the Dam is made available to the lands situated in Raisangpur, Mayurnagar and Chraddhra coming under the command area as provided since 1954;

[c] Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to pass appropriate order directing the respondents to take immediate steps to restrain the illegal users of water from the Dam and right hand side canal of Brahmani Dam and direct the respondents to follow the water supply decisions taken at the time of construction of Dam so far supply of water to Raisangpur, Mayurnagar and Chraddhra villages are concerned;

[d] Be pleased to pass appropriate orders, imposing heavy

cost on the respondent;”

In reply to the contentions and allegations in the petition, the respondents have denied the allegations as to illegal use of water from Brahmani dam and canal of Brahmani Irrigation Scheme for irrigation.

Reply filed by the respondents reads as under :

“3. With reference to Para-2 to 3.4 of the petition, I say and submit that the submissions made therein are not true and correct and hence denied. I say and submit that the petitioner has challenged the inaction on the part of the respondent authorities in administration and distribution of water from Brahmani Dam to Raisangpur, Mayurnagar and Chardhra villages of Halvad Taluka of Surendranagar district. It is further submitted that Brahmani Irrigation Scheme was came into existence in the year 1954-55 and the two canals were constructed for distribution of water. The Right Bank Main canal of Brahmini Irrigation Scheme was on right side whereas the left Bank main canal is on left side of Brahmani river. The capacity of right bank canal is 70 cusec whereas capacity of left bank canal is 150 cusec. The capacity of Brahmani Dam is 1988 Million Cubic ft. The distribution of water through both the canals are administered as per the provisions of Bombay Irrigation Rules, in other wards, each and every year the irrigation department sought for the application form from the villagers for distribution of water. As per the demand made by the villagers in the applications

the Irrigation Advisory Committee processed these applications and as per the provisions of Bombay Irrigation Rules and availability of water, distribution of water is decided by the said Committee. In the instant case the Advisory Committee is comprising of Government. Non-government and members of villages. These members of villages are as a matter of fact the members of Irrigation Advisory Committee and as per discussion held in Irrigation Advisory Committee looking to the level of Brahmani Dam the distribution of water is decided. Hence it is not correct to say that the authorities on their own decide the distribution or that they made any obstruction in free flow of water in canal.

It is further submitted that the present villages are situated on right bank canal and as per the demand made by villages of these three villages the quota of water is decided by Irrigation Advisory Committee and water is given accordingly since 1995 onwards. The charge showing the demand made by above referred three villages and as per the demand the quota decided by the committee is annexed hereto and marked as Annexure-RI to this Affidavit-in-reply.

Hence there is no inaction, illegality and/or inaction on the part of the respondents authorities in administration and distribution of water. It is also not correct to say that after 1995-96 to 2004-05 the flow of water has become slow due to obstruction from certain head strong land owners of upper ground level villages other than above three villages. I say

and submit that the petitioners did not specified as to how the obstruction is being made and by whom and therefore, petitioners are required to put to strict proof in this regard. As a matter of fact since 1995 onwards the water has uninterruptedly being provided to all the villages including the three villages. It is further submitted that permission for lift irrigation was granted by prior to 1995-96 and the permission was not challenged in any way by any person thereafter also. The list of the villagers availing the benefit of this lift irrigation facility is annexed hereto and marked as Annexure-RII to this affidavit. Hence, it is not correct to say that some head strong persons from upper villages are illegally fetching the water by engine.

It is further submitted that the representation dated 19.11.2001 addressed to the Hon'ble Minister for Irrigation was telephonically communicated to our office. It is submitted that communications from Hon'ble Minister of Village Development were received in our office on 19.11.2001 and accordingly a report was forwarded to the Chief Engineer by way of Fax Message dated 20.11.2001. The said report is annexed hereto and marked as Annexure-RIII to this affidavit.

4. With respect to para-4 of the petition, I say and submit that it is not correct to say that the above referred three villages did not get any water due to illegal and unauthorized use of water by land owners of upper level villages. For the sake of brevity I re-iterate my earlier stand about the

administration and distribution of water supply that the water is being provided as per the Gujarat Canal Rules and provisions of Bombay Irrigation Act and no illegalities are being committed in distribution of water in the command area of right bank canal.

5. With respect to Para-5 of the petition, I say and submit that it is not correct to say that some of the land owners have unauthorisedly and illegally connected under ground cement pipe from the lowest surface of the dam and connected them with the underground well situated in private agricultural fields. As a matter of fact six persons from village Didhadiya have submitted applications dated 2.9.2001 for granting the sanction for fetching water from Brahmani dam (River through lift irrigation scheme) on the ground that Brahmani irrigation scheme is not for the purpose of drinking water and the purpose of Brahmani irrigation scheme is solely for the irrigation purpose and by fetching water from the dam directly does not interrupt free flow of water in canal as fetching of water being taken by laying under ground pipes which does not at all damage to the construction of dam. Hence, after filling up Form No.7 it was considered by the competent authority and lifting of water from dam was granted by way of order dated 29.7.2002 for temporary period i.e. From season to season. Copy of the order dated 29.7.2002 is annexed hereto and marked as Annexure-RIV to this Affidavit.

6. With respect to Para-6 of the petition, I deny the contentions raised therein. It is not correct to say that the free

flow of water in the canal is reduced considerably, in respect of above referred three villages and not getting sufficient water for irrigation to their agricultural land. It is pertinent to note here that the dead storage of water which is lying in the dam could not be drawn into canal and above referred land holders were getting water from the dead storage of water. Hence, there is no injustice meted out to any of the villagers as fetching of water is directly from the dead storage of water from the dam itself and not from the canal.”

In reply, the respondents have specifically denied the allegations of any illegal use of water of Brahmani dam and its canals. In reply, they have pointed out that distribution of water from Brahmani Dam is as per advise of the Irrigation Advisory Committee. However, the respondents have admitted that only six persons are permitted to take water directly from the Dam but that was considered after inviting applications and these six persons are selected and permitted to do so for particular season.

In view of the reply filed, no order or direction need be issued or passed on the petition and as such, no interference under Article 226 of the Constitution of India is called for.

The petition is dismissed.

Rule discharged.

[Y.R.MEENA, Actg.CJ.]

[D.A.MEHTA, J.]

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